

Vol 3
Supreme Court of the United States

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No. **451**

LUCILLE HARVEY, AN UNMARRIED WOMAN,
PETITIONER,

VS.

CITY OF ST. PETERSBURG, A MUNICIPAL CORPO-
RATION, FOR THE USE OF GLENN V. LELAND, AS
RECEIVER OF THE CERTIFICATE SINKING FUND
OF THE CITY OF ST. PETERSBURG, FLORIDA,
RESPONDENT.

**PETITION FOR WRIT OF CERTIORARI AND BRIEF
IN SUPPORT THEREOF.**

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OF THE CITY OF ST. PETERSBURG, FLORIDA,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI.

To the Supreme Court of the United States:

Lucille Harvey, an unmarried woman, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Florida entered in the above case on June 28, 1940, affirming the judgment and decree of the Circuit Court of Pinellas County, Florida, which held that a state court receiver was the proper party to foreclose municipal public improvements liens against the private property of petitioner:

OPINIONS BELOW.

The order and decree of the Pinellas County Circuit Court (R. 62) is not reported. The Supreme Court of the State of Florida has rendered two opinions in this case, one (R. 72) is reported in 189 So. 861, the other (R. 81) is reported in 197 So. 116.

JURISDICTION.

The judgment of the Supreme Court of Florida, excepted to, was entered June 28, 1940 (R. 82). The jurisdiction of this court is invoked under the provisions of Section 237 (b) of the Judicial Code as amended by the Act of February 13, 1925, Section 344 (b) of Title 28, United States Code Annotated.

QUESTION PRESENTED.

Can public improvement lien certificates, issued by the City of St. Petersburg, a municipal corporation, be legally foreclosed against real estate by a receiver, appointed by the Circuit Court of Pinellas County, Florida, for the express purpose of foreclosing and collecting said public improvement liens, and can the rightful owner of said lands be legally divested of her title thereto in this manner?

HOW FEDERAL QUESTION RAISED AND CONSIDERED IN THE COURT BELOW.

Respondent, a state court receiver, filed a bill in the Circuit Court of Pinellas County, Florida, to foreclose certain public improvement lien certificates issued by the City of St. Petersburg, against the property of petitioner. Petitioner answered the bill, and incorporated in her answer a motion to dismiss the bill, on the ground (R. 30):

(a) That the appointment of the receiver for the purpose of collecting said certificates was void, and that all subsequent proceedings based thereon were invalid.

The motion to dismiss the bill of complaint was denied in the lower court and this order of the lower court was affirmed by the Supreme Court of Florida, 189 So. 861.

The cause proceeded to trial and final hearing. A final decree was entered by the Circuit Court of Pinellas County, Florida, granting the prayer of the receiver, foreclosing the public improvement liens and ordering petitioner's property sold to satisfy the judgment entered.

An appeal was taken from this final order and decree to the Supreme Court of Florida.

The federal questions here presented were presented to the Supreme Court of Florida by assignments of error No. 1 (R. 67), No. 2 (R. 68), and No. 3 (R. 69). The questions thus presented to the Supreme Court of Florida were decided adversely to the contentions of petitioner, and the decree and judgment of the Circuit Court of Pinellas County, Florida, authorizing the foreclosure of these municipal public improvement liens by the receiver, was affirmed.

The Supreme Court of Florida is the court of last resort of that state.

STATEMENT.

The City of St. Petersburg is a municipal corporation. Petitioner is the owner of certain real estate in this City. Sometime prior to February, 1927, the City caused certain sidewalks to be laid in front of and abutting on petitioner's real estate. On April 5, 1927, the City, to secure the costs of these alleged improvements, issued its public improvement lien certificates against petitioner's property. Similar improvements were placed

in front of and abutting on a large number of other parcels of real estate in said City and similar public improvement lien certificates were issued against these properties. All these certificates were sold by the City to private parties and their payment was guaranteed by the City. The certificates were not paid when they matured (R. 17).

The City entered into an agreement with the holders of these various certificates under the terms of which the City was to issue its general obligation refunding bonds and deliver them to the certificate holders in return for the certificates. The terms of this contract were complied with and the bonds were delivered to the private holders and the City took up its public improvement lien certificates and became again the owner thereof. These certificates were deposited with Glenn V. Leland, the director of finance of the City, for collection (R. 54). At the time of completing this exchange transaction, the City issued and delivered to these private individuals to whom it had delivered its refunding bonds, its delinquent interest certificates, in payment of the interest which had accumulated on the public improvement lien certificates.

The director of finance of the City was directed to proceed with the collection of these public improvement certificates and the proceeds of these collections were to be used to pay the delinquent interest certificates, just described, and to retire the bonds which had been exchanged for the certificates.

About November 9, 1935, the holders of some of these delinquent interest certificates brought a suit in the state circuit court, and asked that a receiver be appointed to take charge of and collect all of these improvement lien certificates which were owned by the City (R. 17). On November 12, 1935, the circuit court appointed as re-

ceiver the same Glenn V. Leland who already held the certificates for the City, as its director of finance, and who was already charged with the duty of collecting them, and as said receiver he was ordered to proceed to collect the same certificates by actions at law or in equity (R. 47).

The jurisdiction alleged for appointing the receiver was that Glenn V. Leland, holding these certificates as director of finance of the City, was a trustee and the court had jurisdiction over trusts; further that he as receiver could perform his duties better (R. 47).

The receiver thus appointed, on June 1, 1938, filed a bill of complaint for the purpose of foreclosing the public improvement lien certificates which had been issued against petitioner's real estate as herein stated (R. 1).

To this bill of complaint an answer was filed by petitioner in which was incorporated a motion to dismiss the bill (R. 30). It was contended in this motion that the appointment of the receiver to make collection of the public improvement lien certificates of the City was void and that the receiver has no legal authority to institute the foreclosure proceeding (R. 35). This motion was denied by the Circuit Court of Pinellas County. The Supreme Court of Florida affirmed this ruling of the circuit court, 189 So. 861.

On petition for certiorari the Supreme Court of the United States declined to disturb this ruling, on the ground that there was no final decree, 84 L. Ed. 95.

The cause then proceeded to final hearing and a final decree was entered, ordering the foreclosure of the liens, and a sale of the real estate covered by said liens to satisfy the judgment therefor.

Appeal was taken from this final decree to the Supreme Court of Florida. The Supreme Court affirmed

the judgment and decree of the lower court (R. 82) 197 So. 116.

The Supreme Court of Florida in announcing the law of this case, on the first appeal, 189 So. 861, stated (R. 76):

"* * * we are of the opinion that the lower court had jurisdiction to appoint the receiver for the express purpose of collecting by suit the special assessment improvement liens issued by the City of St. Petersburg, and there was no error in its ruling on this question."

The Florida Supreme Court also ruled (R. 80):

"The decree of the lower court in so far as it denied the motion to strike designated parts of paragraphs six and eight of the answer is accordingly reversed and in all other respects affirmed and the cause remanded for further proceedings not inconsistent with the views herein expressed."

SPECIFICATION OF THE ERRORS TO BE URGED.

Petitioner urges that the Supreme Court of Florida erred:

(1) In holding that a state circuit court had the jurisdiction and authority to appoint a receiver for the express purpose of collecting public improvement lien certificates.

(2) In holding that a receiver appointed by a state circuit court has the right and authority to institute suits for the purpose of collecting municipal public improvement lien certificates.

(3) In affirming the decision of the Circuit Court of Pinellas County, Florida, which ruled that a state court receiver had authority and jurisdiction to proceed

by suit to enforce collection of municipal public improvement lien certificates.

REASONS FOR GRANTING THIS WRIT.

The state court receiver, under the decision of the Supreme Court of Florida, will proceed to sell the lands of petitioner to satisfy the judgment and decree entered by the Circuit Court of Pinellas County, Florida, in favor of the circuit court receiver. As a result of this sale petitioner will be deprived of her property without due process of law and in violation of the provisions of the 14th and 5th Amendments to the Constitution of the United States.

The judgment of the Supreme Court of the State of Florida, now excepted to, is in violation of the organic law of the land and constitutes an encroachment by the judiciary upon those powers of government which are vested exclusively in the legislative department.

This judgment, authorizing a state receiver to collect for a municipality, an obligation of the same nature as a tax, is of such broad interest and is so directly in conflict with the uniform policy of government recognized and enforced in this country, that sufficient reason is presented for granting the writ.

The federal question presented to the Supreme Court of Florida and presented here was not specifically discussed by that court. This federal question was necessarily decided, however, by the Florida Supreme Court, in its final decision and judgment rendered and in its opinions under date of June 16, 1939, and June 28, 1940. Such a decision complies with the requirement of law and gives jurisdiction here.

See *Southwestern Bell Telephone Co. v. Oklahoma*, 303 U. S. 206, 82 L. Ed. 751.

Wherefore, petitioner respectfully prays that this petition for writ of certiorari be granted and that the judgment of the Supreme Court of Florida rendered in this cause be reversed.

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